



REPUBLIC OF KENYA



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**China Wu Yi Limited v Langat (Appeal E030 of 2025)
[2026] KEELRC 323 (KLR) (6 February 2026) (Ruling)**

Neutral citation: [2026] KEELRC 323 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
APPEAL E030 OF 2025
AN MWAURE, J
FEBRUARY 6, 2026**

BETWEEN

CHINA WU YI LIMITED APPELLANT

AND

ERICK LANGAT RESPONDENT

RULING

1. The Appellant/Applicant filed a Notice of Motion dated 6th October 2025 under Certificate of Urgency seeking the following orders that:
 - i. Spent
 - ii. This Honourable Court be pleased to review and set aside the ruling and orders delivered on 26th September 2025 dismissing the Applicant’s application on grounds of lack of jurisdiction.
 - iii. Upon review, this Honourable Court do hold that it is properly seized of Jurisdiction to hear and determine the appeal herein and re-consider the application dated.
 - iv. Costs of this application be provided for.
2. The application is brought under Order 45 Rule 1 of the Civil Procedure Rules, Section 3, 3A, and 80 of the *Civil Procedure Act*, Article 50 and 159 of *the Constitution* and all other enabling provisions of the law.

Appellant/Applicant’s case

3. The application is supported by the affidavit of Joe Wairumbi Thuo, the Appellant/Applicant’s advocate, dated even date as the application.



4. The deponent avers that this Honourable Court erred in finding it lacked jurisdiction, noting that Article 162(2)(a) of *the Constitution* and section 12(1) of the *Employment and Labour Relations Court Act* grant exclusive jurisdiction over employment disputes, including workplace injury claims.
5. The deponent avers that the plaint in Narok CMCC No. 130 of 2018 clearly pleaded that the Respondent was employed by the Appellant/Applicant and injured in the course of employment, with particulars of negligence confirming the claim's employment nature.
6. The deponent further avers that the finding of forum shopping was mistaken, as the Narok High Court appeal (E016 of 2025) was withdrawn before this appeal was filed.
7. The deponent avers that in 2018, specialized Magistrates' Courts for employment matters were gazetted under Gazette Notice No. 6024 of 2018 which was not yet operational and the *Work Injury Benefits Act* had been declared unconstitutional, making it common practice to file such claims in civil courts.
8. The deponent maintains that the dispute is employment-related, that this Honourable Court is properly seized of jurisdiction, and that the ruling dismissing the appeal was based on an error apparent on the record.
9. The deponent avers that the application was filed promptly, and unless reviewed, the Applicant will suffer prejudice by being denied access to the proper appellate forum.

Respondent's grounds of opposition

10. In opposition to the application, the Respondent filed grounds of opposition dated 9th October 2025 on the following grounds that:
 1. The application is bad in law, misconceived, incompetent, and an abuse of the process of the court and is hinged on air.
 2. The application is not maintainable and is filed male fides with the mere intention of delaying the Respondent from enjoying the fruits of the judgment delivered over 1 year ago.
 3. The application is fatally defective, as the Applicant has not even annexed the ruling or order that it seeks to be reviewed.
 4. There is no reason or any sufficient reason upon which this court can exercise its discretion in favour of the Applicant as the Judgement obtained by the Respondent was properly and regularly obtained.
 5. Personal injury claims, such as the Respondent's, are not employment disputes, thus this honorable court was right in making its decision 26th September, 2025 to the effect that it does not have the jurisdiction to entertain this matter.
 6. The only grounds upon which an application for review, such as the one that is now before this Court, can be founded are:-discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him/her at the time when the decree was passed or the order made or; on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason.
 7. The Application before this Court does not qualify to warrant orders of review to issue, as there is no error or mistake apparent on the face of the record, no new matter of evidence has been discovered, and there are no sufficient reasons whatsoever to warrant such orders.



8. The Court of Appeal has previously held that while a point may be a good ground of appeal, it may not be a good ground for review, and an erroneous view of evidence or law (as is the case in this application) is not a ground for review though it may be a good ground for appeal. According to the Applicant, this honourable court misapprehended the evidence provided before it proceeded to hold that it does not have jurisdiction to hear this matter thus the only way to correct the Honourable Court's alleged misapprehension of the substantive law or its purported misapprehension of facts concerning jurisdiction, is to appeal the decision
 9. The application is an afterthought choreographed to wade off execution, as the Applicant is yet to pay the Respondent even a single cent of the decretal sum since judgment was entered.
 10. There is no competent appeal to be determined by this Court either way, as the Ruling that the applicant seeks to appeal against was delivered on 24th April, 2025, while the memorandum of appeal, though dated 19th May, 2025 was lodged on 28th May, 2025 as can be discerned from the CTS, without leave of Court, thus there exists no appeal.
 11. The application is without any basis at all.
11. Parties canvassed the application by way of written submissions.

Appellant/Applicant's submissions

12. The Appellant/Applicant submitted that the application is based on provisions of the Order 45 Rule 1 of the Civil Procedure Rules, sections 3, 3A, and 80 of the *Civil Procedure Act*, and Articles 50 and 159(2)(d) of *the Constitution*, which allow courts to review their own decisions in cases of new evidence, mistakes, or errors apparent on the record. The Appellant relied on the case of National Bank of Kenya Ltd v Njau [1997] KECA 71 (KLR) the Court of Appeal stated that a review is appropriate to correct obvious errors or omissions that are self-evident, while in Francis Origo & another v Jacob Kumali Mungala [2005] KECA 356 (KLR) the Court of Appeal emphasized that the purpose of review is to prevent injustice and address clear legal or factual mistakes that would otherwise go unresolved.
13. The Appellant/Applicant argued that this Honourable court erred in finding that it lacked jurisdiction since the underlying claim in Narok CMCC No. 130 of 2018 clearly involved a workplace injury arising from an employment relationship, which falls within the mandate of the Employment and Labour Relations Court under Article 162(2)(a) of *the Constitution* and section 12(1) of the ELRC Act.
14. The Appellant/Applicant submitted that the Narok High Court appeal was withdrawn in good faith before filing the present appeal, making the finding of "forum shopping" a factual error. The Appellant/Applicant explains that the original suit was filed in the Civil Division in 2018 due to the non-operationalization of specialized Magistrates' Courts and the then-uncertain status of the *Work Injury Benefits Act*. The Appellant/Applicant also submitted that the application was filed promptly within ten days of the ruling, and unless granted, the Respondent may execute the decree, causing substantial prejudice.
15. The Appellant/Applicant therefore prays that the ruling be reviewed and set aside, the Court affirms jurisdiction, the appeal be heard on its merits, and costs be awarded.

Respondent's submissions

16. The Respondent submitted that Order 45 Rule 1 of the Civil Procedure Rules allows review only in cases of new evidence, an error apparent on the record, or other sufficient reason. In the cases of Republic v Nairobi City County Council Assembly & another [2025] KEHC 5656 and National



Bank of Kenya Ltd v Ndungu Njau(supra), have emphasized that review is not a substitute for appeal and cannot be based on dissatisfaction with a ruling or re-argument of issues already decided. Since the Appellant/Applicant has not demonstrated discovery of new matter or a clear, self-evident error, the application does not meet the statutory threshold for review.

17. The Respondent submitted that this Honourable court rightly declined jurisdiction over the appeal since the underlying claim in Narok CMCC No. 130 of 2018 was a personal injury matter rather than an employment dispute within the Employment and Labour Relations Court's mandate. The Respondent relied on the case of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KECA 48 (KLR), the Respondent emphasizes that jurisdiction is fundamental and without it a court cannot proceed.
18. The Respondent further contends that the Appellant/Applicant's withdrawal of Narok High Court Civil Appeal No. E016 of 2025 before filing the present appeal amounts to forum shopping and abuse of process, as defined in Muchanga Investments Ltd V Safaris Unlimited (Africa) Ltd & 2 others [2009] KECA 453 (KLR), where the Court of Appeal held:

"The term abuse of court process connotes a situation where the process of court has not been used bona fide and properly but in a wrongful manner to vex or oppress the opponent."
19. In Karibu-Whytie J S In Sarak V Kotoye (1992) 9 NWLR 9pt 264) 156 at 188-189(e) where the Nigerian court defined the concept of abuse of judicial process as follows: - "The concept of abuse of judicial process is imprecise; it implies circumstances and situations of infinite variety and conditions. It's one feature is the improper use of the judicial powers by a party in litigation to interfere with the administration of justice"
20. The Respondent concludes that the ruling of 26th September 2025 was sound, the Applicant has not met the threshold for review under Order 45 Rule 1 of the Civil Procedure Rules, and the trial court, being functus officio, should dismiss the application with costs.

Analysis and determination

21. The court has considered the application, grounds of opposition and submissions by both parties; the main issue for determination is whether the application is meritorious.
22. Section 16 of the *Employment and Labour Relations Court Act* provides as follows:

"The Court shall have power to review its judgements, awards, orders or decrees in accordance with the Rules."
23. Rule 74(1) of the Employment and Labour Relations Court (Procedures) Rules 2024 provides as follows:

"A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling—

 - (a) if there is discovery of a new and important matter or evidence which, despite the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made;
 - (b) on account of some mistake or error apparent on the face of the record;
 - (c) if the judgment or ruling requires clarification; or



- (d) for any other sufficient reason.”
24. In *National Bank of Kenya Ltd v Njau*(supra) the Court of Appeal stated as follows:
- “A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”
25. In this instant case, this Honourable Court gave its ruling on 26th September 2025 stating that it lacked jurisdiction to determine the application since the underlying claim in Narok CMCC No. 130 of 2018 clearly involved a workplace injury arising from an employment relationship of a casual worker with no concrete evidence of the employment status. The Appellant/Applicant submitted that the Narok High Court appeal was withdrawn in good faith before filing the present appeal, making the finding of “forum shopping” a factual error. The Appellant/Applicant explains that the original suit was filed in the Civil Division in 2018 due to the non-operationalization of specialized Magistrates’ Courts and the then-uncertain status of the *Work Injury Benefits Act*. On the other hand, the Respondent argued that this Honourable was of sound mind in stating that it does not have jurisdiction to handle this matter.
26. This Honourable Court refers back to the plaint filed and the subsequent judgment thereto which has not been availed to court. The plaint reveals the matter is of a civil nature involving negligence on the part of the Appellant and since the appeal is from the Chief Magistrate’s Court, the proper court to entertain the appeal is still the High Court.
27. The Appellant had indeed filed the appeal in the High Court and orders had been given by the High Court Narok Law Courts for stay of execution on condition the Applicant deposited the decretal sum in court. The said orders were given on 20th May 2025.
28. The Appellant then filed the same or similar application dated 19th May 2025 before the Employment and Labour Relations Court. He withdrew the application before the High Court on 29th May 2025.
29. The principles set out in Rule 74(1) of the Employment and Labour Relations Court Procedure Rules on review are clear: -
- i. Discovery of new and important evidence
 - ii. Mistake or error apparent on the face of record
 - iii. Need for clarification of the judgment
 - iv. Other sufficient reasons.
30. The court finds none of the above has been proved in this case and therefore, there would be no justification for the court to review its Ruling delivered on 26th September 2025.
31. As stated in the case of *National Bank of Kenya Ltd -VS- Njau* (Supra). A Review may be granted when the court considers that it is necessary to correct an apparent error or omission on the part of the court.
32. The Court of Appeal have previously held that while a point may be a good ground for appeal it may not be a good ground for review.



33. This court finds that the Appellant has failed to prove sound reasons for the court to review its ruling. The court would be loathe to sit on its own appeal.
34. The Appellant's application therefore dated 26th September 2025 is lacking any merits. It is dismissed with costs to the Respondent.

Order accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 6TH DAY OF FEBRUARY, 2026.

ANNA NGIBUINI MWAURE

JUDGE

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

